BEYOND REASONABLE DOUBT:

THE INFLUENCE OF VICTIM STEREOTYPES AND SOCIAL BIASES ON POLICE RESPONSE TO WOMEN'S COMPLAINTS OF SEXUAL ASSAULT

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I. INTRODUCTION

Public awareness and sensitivity to issues of sexual assault and child sexual abuse have increased substantially in Newfoundland and Labrador, particularly with the well-publicized judicial inquiry investigating the justice system's response to complaints of abuse at the Mount Cashel Orphanage. But the process of public awareness did not begin with Mount Cashel, but with the arrest and conviction of Dr. Stephen James Collins (1986 no. 157, Nfld. Court of Appeal). Dr. Collins was convicted of eleven offenses (seven counts of sexual assault, four counts of indecent assault) against young children.

While there had been other cases of sexual assault (see Barnable, 1987), none had struck the public consciousness with the same impact as did the case of Dr. Collins. Indeed, the public was outraged when Dr. Collins successfully appealed his sentence of five years and the court reduced it to two years. The arrest of Roman Catholic priest James Hickey in January 1988 and the news that he had been charged with molesting altar boys in his parishes changed the tenor of public debate. Reports of sexual assault against girls and women had been duly reported in the court briefs but these cases did not provoke the same sense of public indignation, except perhaps among members of the women's community and the feminist groups who were struggling to provide services to victims of sexual assault.

But it wasn't until the news media began reporting on the allegations of physical and sexual abuse made by former residents of Mount Cashel, that people began to mark the "beginning" of this province's sex scandals with the arrest of James Hickey. And all too soon, these abuses began to be attributed to the "deviant" practice of homosexuality rather than paedophilia, since the abusers were men, and the victims were

boys. In an opinion piece for the Toronto Globe and Mail, local author Helen Porter wrote:

> *Shouldn't the public's attention be drawn toward the similarity in the patterns of abuse between the Mount Cashel situation and the sexual abuse of female children by their fathers and their grandfathers and other powerful inhabitants of their young worlds?*

Asking this question was in no way meant to detract from the victims in Mount Cashel, but it did prompt other questions. What **did** we know about sexual assault against women and children in Newfoundland and Labrador? What were the statistics? Had there been any changes in reporting and processing complaints of sexual assault since 1983 when the new sexual assault law was passed? Were there more charges and more convictions?

These were questions which clearly needed answers if we were to respond to the demands of both the public and the agencies providing services to victims of sexual assault. It became apparent that there wasn't very much information available, and what little there was, was both confusing and frequently inaccessible. For example, a request for the number of reported assaults would not provide a breakdown in which assaults committed against women were separated from those committed against men.

The paucity of primary and new research[1] on this issue, both locally and nationally, provided the Provincial Advisory

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[1] For example, both feminists and related service agencies relied on Lorene Clark and Debra Lewis' landmark study, **Rape: The Price of Coercive Sexuality**, which used data collected from Toronto police files to develop a statistical profile of rapists and their victims as well as to analyze the justice system's response to women's complaints of rape. However, the study had been published in 1977, and therefore did not account for any changes in the sexual assault provisions of the Criminal Code of Canada. Even the Provincial Advisory Council's own publication, **Women and Violence** (1985) was out of print, and the information we had collected then was geared to advising victims on what to expect concerning the police process when reporting sexual assaults. It should be noted, however, that a more in-depth review of the literature revealed two other studies (Gunn & Minch, 1988; Hinch, 1988) which addressed the impact of the changes made in the Criminal Code with respect to sexual assault.

Council on the Status of Women with the impetus to pursue funding for a research project which would investigate the response of the criminal justice system to women's complaints of sexual assault.

We chose to narrow the focus of our research to investigating the police[2] response to complaints of sexual assault. Since the police very often mark the sexual assault victim's first contact with the justice system and since they play such an influential role in determining which complaints proceed into the next level of the justice system (as demonstrated in the conclusions of other studies cited in the literature review), our study first focuses on the reasons, some overt, some covert, the police use for making their decisions on which cases will result in charges and which ones won't. Secondly, our study examines the extent to which police policies fail to protect a woman's integrity during the complaints process.[3]

It is our hope that this document will provide its readers with useful information concerning the police response to reports of sexual assault in this province, and that this study will be a valuable resource for other researchers who wish to address this issue. To assist in this endeavour, we have made recommendations which we believe will help sensitize enforcement agencies to women's experience of sexual assault.

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2 For the purposes of clarity and brevity, the term police includes the Royal Canadian Mounted Police and the Royal Newfoundland Constabulary, both of which operate in the province of Newfoundland and Labrador.

3 Gisela Ruebsaat (1985) notes that the changes proposed by Bill C-127 concerning sexual assault were made based on a framework which supported 1) the protection of the integrity of the person; 2) the protection of children; 3) the safeguarding of public decency; 4) the elimination of sexual discrimination from the Criminal Code; 5) concentration on the violent nature of sexual assaults; and 6) protecting complainants from harassment in the courtroom.

II. RESEARCH PROCESS

In developing our research process, we faced several difficulties. We acknowledge that by looking only at the police files, we are looking at only one part of the picture; for example, a more complete picture would emerge if we were able to interview complainants who had reported their sexual assault to the police. However, this was not possible because of our concerns with maintaining confidentiality and with the possible exploitation of the victims of sexual assault. Time and financial resources also did not permit us to follow a complaint from its beginnings with the complainant's report to the police to its eventual conclusion in the courts.

We decided to review files pertaining to sexual assault, from both the Royal Newfoundland Constabulary and the Royal Canadian Mounted Police, for 1989 (the most recent year concluded when the research project began). Permission was granted by both agencies, with the proviso that confidentiality would be maintained, and that any identifying details from the official files would be removed in any discussion of the data.[4]

There are, as noted, two police forces in Newfoundland and Labrador: the RCMP work in rural communities outside city centres, while the RNC works in the larger urban centres of St. John's, Corner Brook, Churchill Falls, and Labrador City/Wabush. We wanted to obtain a good cross-section of files from both small and large communities. The RCMP detachments chosen covered two small communities, two large towns and any outlying communities in their jurisdictions. We

[4] The project researcher first met with the Superintendent of the Royal Canadian Mounted Police to discuss the research project and to request permission to review selected RCMP files pertaining to complaints of sexual assault. The project researcher also met with the Superintendent of the Royal Newfoundland Constabulary to discuss the objectives of the study; however, permission to review the RNC files could only be granted by the Provincial Department of Justice. The project researcher then contacted the Deputy Minister of Justice with the provincial government to discuss the importance of having access to the files; subsequently, we obtained the department's permission to review the RNC police reports.

chose St. John's as the source of RNC files.

Only police files on women aged 14 years or older were examined. A 14-year old female can consent to sexual relationships with male partners as long as the male is not more than three years older (CCC, S. 146).[5] However, the Criminal Code prohibits sexual relationships with females younger than 14, even when consent is given. Files which included complaints by females older than 14 but reporting assaults which took place when the complainant was younger than 14 were not included, with the exception of those reporting assaults which continued after the complainant turned 14 years of age.

In total, 104 files[6] were reports made by women 14 years and older at the time of the assault. These 104 files became the source documents for the data as described in section 4 of this report. There were 122 complainants and 117 offenders; some files involved more than one complainant or more than one offender.

5 In Tremear's Criminal Code 1991, the relevant section is numbered 153 (216-7).

6 The total file breakdown is as follows: 42 came from the RCMP and 62 came from the RNC.

III. LITERATURE REVIEW[7]

3.1 Historical Perspectives

The sexual assault of women is not new; in fact, many feminists have argued that rape and sexual assault have been sanctioned for centuries, interpreted, both judicially and politically, as a crime against property, and mythologized in literature and popular culture (Brownmiller, 1975; Clark & Lewis, 1977; Griffin, 1979; Haskell, 1987). What is new is our willingness to speak out on issues of violence against women, to challenge the myths and stereotypes concerning sexual assault, and to work for change in society.

In 1970, the Royal Commission on the Status of Women in its report made reference to rape and sexual assault, in a chapter titled "Criminal Law and Women Offenders" (Bird, 365ff). What is most interesting about their discussion is the commission members' approach to the issue: much of their concern lay in challenging the Criminal Code for its unequal provisions concerning women and men's responsibility in the offenses categorized as criminal sexual behaviour.[8]

Only in one instance did the Commission members discuss the treatment of women who report sexual assault. The Commission report recommended that provisions relating to the Criminal Code's idea of "previously chaste character" with respect to rape victims younger than 21 be deleted, saying "it is unjust to define a crime on the basis of the moral character of the victim" (Bird, 373). Whatever else the Commission may have ignored in its discussion of sexual

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7 Given the differences between the Canadian and American justice systems, we preferred to focus our literature review on Canadian studies. American studies were consulted with respect to methodology and references are made where appropriate. For more information, please refer to Holmstrom & Burgess, 1978; Katz & Mazur, 1979; McCahill, Meyer & Fischman, 1981; Williams & Holmes, 1981; Ageton, 1983; and Burgess, 1988.

8 For example, the Commission notes that a woman could be charged with common assault if she attempted to seduce a man using violence, whereas a man in similar circumstances could be "charged with rape, indecent assault on a female, seduction, or sexual intercourse if the female is under age" (Bird, 372).

assault (and more broadly the issue of violence against women, and particularly wife assault), it did highlight how sexual assault victims could be classified by their character.

In 1977, researchers Lorene Clark and Debra Lewis released their empirical study of rape complaints made in 1970 to the Toronto Police department, a landmark study which concluded that the background and character of complainants influenced the police in their decisions to treat complaints of rape and sexual assault as founded or unfounded:

> *... it is very clear from our data that the primary determinants of police classification are variables which describe the victim -- her age, her marital and occupational status, her emotional and physical condition when she reports the crime. These are the factors which determine whether a case will proceed further in the criminal justice system, or be dismissed as "unfounded"* (Clark & Lewis, 77).

As a result of their research and analysis, Clark and Lewis made recommendations which suggested that laws addressing sexual assault be amended to de-emphasize the sexual nature of rape and to focus on the assault.[9] In particular, Clark and Lewis concluded that:

> *Our legal system defines and treats rape as an offence against property, and not as an offence against the person. Rape laws were not designed to protect a woman's right to physical and sexual autonomy, but to preserve male rights of ownership in valuable property, including sexual and reproductive property. And it is the pre-eminent value placed on female sexuality -- the quality that makes women most valuable within our system of private property -- which accounts for the fact that rape has historically been defined as a "sexual offence"* (Clark & Lewis, 159-160).

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9 Similar recommendations were made by the Law Reform Commission's **Report on Sexual Offenses** (1978) and the Federal Department of Justice in its 1980 information paper on sexual offenses.

3.2 Changes to the Criminal Code

In August 1982, Bill C-127 (An Act to Amend the Criminal Code in Relation to Sexual Offenses) was passed by the House of Commons. Implemented in January 1983, the amendments removed the charges of rape, attempt to commit rape, indecent assault on female, and indecent assault on male. Instead the law created three sexual assault offenses: sexual assault (s. 246.1); sexual assault with a weapon, threats to a third party or causing bodily harm (s. 246.2); and aggravated sexual assault (s. 246.3).[10]

The principal objectives for implementing these changes was to: "... make it easier for women to report incidents to the police, for the police to charge offenders, and for the courts to register convictions" (Hinch, 109). Two recent studies of sexual assault have contributed much valuable information concerning changes in attitude towards sexual assault since 1983, the efficacy of the changes in the sexual assault laws, and the treatment of complainants in the justice system.

In 1988, Rita Gunn and Candice Minch reported on the research they conducted in the Winnipeg area, using police files and reports made in 1976 and 1977.[11] The first part examined the complainant's response to the sexual assault and also identified reasons why women do or do not report their assaults; the second evaluated the justice system's response to sexual assault from the police level through to the court levels.

In addition to social biases inherent at the police level identified by Clark and Lewis, Gunn and Minch hypothesized that filtering of files at the police level was also influenced by expectations of the court. The two researchers defined filtering

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10 In Tremeear's Criminal Code 1991, the relevant sections are numbered 271, 272 and 273 respectively (419-23).

11 Please see **Sexual Assault: The Dilemma of Disclosure, The Question of Conviction**. Winnipeg: University of Manitoba Press, 1988.

as "*the termination or reduction of sexual assault charges as they proceed through the criminal justice system*" (Gunn & Minch, 53). To test their hypothesis and to develop a more complete picture of the justice system's response to women's complaints of sexual assault, Gunn and Minch followed the progress of police files from the complainant's first report through to the final conclusion in court. Gunn and Minch found that more than 70 per cent of the complaints never reached the trial level, and almost 60 per cent of these files were filtered out at the police level. Only ten per cent of the original charges resulted in conviction (Gunn & Minch, 79).

Also in 1988, Ronald Hinch reported on his exploratory study of the impact of Bill C-127 on police processing of sexual assault complaints in Halifax[12]. His conclusions are summarized below:

> *It was hypothesized that Bill C-127 would have minimal impact upon police decision-making. The hypothesis was confirmed by evidence that the abolition of both penetration and corroboration requirements was nullified by the continued administration of the rape kit examination, and by the evidence that police continue to discriminate against disreputable victims* (Author's Abstract).

In particular, Hinch noted that the change in name (from rape to sexual assault) did not necessarily result in a change in attitude of the police. Hinch also noted there were difficulties in actually defining sexual assault, a problem also identified by Gunn and Minch in their discussion of the impact of the new sexual assault provisions.

12 Please see Ronald Hinch, "Enforcing the New Sexual Assault Laws: An Exploratory Study," **Atlantis**, Vol 14, No. 1, Fall 1988, pp. 109-115.

3.3 Questions of Power

> *Sexual assault has been exposed as a violent offence involving power and domination. Whether females are accosted on the street, harassed in the workplace, or fondled at home by their fathers, there is one common theme – an imbalance of power in which violence is implicit* (Gunn & Minch, 12).

Violence has been used as a way of acquiring (or maintaining) power and the threat of violence silences victims and controls their behaviour. Victims are often blamed because it is assumed that they have either the responsibility or the power to protect themselves. Violence can go unreported because the extent of damage (physical, mental and emotional) done to victims is not understood or perceived to be the result of violence. For example, the Ontario Medical Review reported that in one study, doctors misdiagnosed wife assault 24 times out of 25 cases (OMR, 1988, 2).

This lack of understanding is reflected in the institutions that deal with perpetrators and victims of violence, and it prevents these institutions from being effective. Indeed, if we are sincerely committed to addressing issues of violence, we must acknowledge how the practices of these institutions maintain the imbalance of power that exists, and do little to give victims the power and support they need to survive the effects of violence.

This concept of an imbalance of power is integral to analyses of sexual assault, as is the recognition that social institutions reflect social biases and perceptions about victims. Although there has been some progress in changing society's attitudes toward women, society is still reluctant to recognize women's sexual integrity.

The principle of sexual integrity is based on women being entitled to choose how, when, and with whom they are sexually active, and to set their own limits and the limits of their

partners in their expression of sexual behaviour. Women's experience and knowledge reveals that society and its institutions do not acknowledge or recognize women's sexual integrity. Consequently, women and children keep sexual assaults to themselves.

Literature on sexual assaults indicates that few assaults are reported compared with estimates of those that actually occur. Estimates, however, often refer to the old law of rape, and are based on figures before 1983. In 1977, it was assumed that only 40 per cent of all rapes were reported (Clark & Lewis, 57). In 1984, a Canadian survey found that 62 per cent of sexual assault victims do not report the incident to the police (Solicitor General, 3), bearing out the estimates assumed in 1977.

Another survey of Canadian women suggested that one in four women "*... are or will be victims of sexual assaults*" but the survey analysts noted these estimates are conservative since, given the nature of the crime, it is highly likely that not all respondents would admit to being sexually assaulted (Gunn & Minch, 13).

There are many factors that influence a woman's decision not to report a sexual assault. Some women do not report sexual assault because they believe there is a stigma attached to being a victim of sexual crimes. Often a woman may blame herself or wonder what she did to cause the assault (Gunn & Minch, 3). This assumption can be reinforced by the initia' response of people to whom the woman discloses the sexual assault. Discouraging responses include disbelief, accusations about her behaviour, and/or ridicule from family, partners, or friends.

Women who have experienced physical and sexual violence, especially at an early age, are less likely to report a sexual assault than those women who haven't a history of

physical or sexual abuse. Often these victims will consider aggressive situations normal or else they will fear further violence from the assailant if they disclose (Gunn & Minch, 44).

A victim is also less likely to report an offender who is well-known to them, especially if the offender is a personal or family friend, or a relative. Women who are not convinced that anyone will believe them, or who are concerned about the attitudes of the police or the courts, are also less likely to report a sexual assault. Some women believe the police aren't able to do anything about the assault or they perceive the incident as a personal matter and of no concern to the police (Solicitor General, 1984, 4).

Women who have been sexually assaulted also refrain from reporting to the police because they fear going through the police and court processes, which involve interviews, testimony and cross-examination. Part of this fear is that this process will re-victimize them (Marshall, 218).

3.4 Social Biases and Victim Stereotypes

The literature on sexual assault research indicates that the progress of sexual assault files "*... through the criminal justice system reflects a highly selective process of elimination*" (Clark & Lewis, 57). As we showed earlier, this process of elimination begins with victims who decided not to contact the police, and it continues even after complaints are made. Clark and Lewis demonstrated in their research that:

> *... social attitudes and the legal and judicial processes all conspire to keep women from having effective exercise of their political and human rights. Despite the fact that laws against rape exist on the books, ostensibly for women's protection, there are effective social and legal constraints which prevent women from utilizing their legal rights* (Clark & Lewis, 182).

Previous research on sexual assault also suggests that judges' expectations and defence lawyers' tactics influence police decisions to pursue charges against offenders (Gunn & Minch, 17). Moreover,

> *While Crown attorneys have an obvious direct influence over charges in the court system, they also have an influence on police proceedings, albeit in a less direct manner. The police must make decisions on charges based on their expectations of the Crown's willingness to accept and proceed with the charges in the court system* (Gunn & Minch, ix).

These influences are sometimes obvious, but like social biases, they can be internalized and affect certain decisions in the judicial process. For example, the police need probable and reasonable grounds to lay a charge; the police translate this to mean sufficient evidence. Even though the police recognize that the law no longer requires corroborating evidence to proceed with a charge, they still look for tangible evidence such as torn clothing, bruises, and other witnesses to support laying a charge against an accused (Hinch, 113). This approach is problematic because it nullifies the effect of the changes made to the sexual assault law in 1983.

The court requirements also suggest indirectly to police that only "respectable" victims who were assaulted under "acceptable" conditions should be brought forward (Clark & Lewis, 92). Police may hesitate or refuse to lay a charge in files where the complainant does not appear to the police to be a credible witness. As a witness, the complainant must be able to withstand the rigors of cross-examination and to convince the judge or jury her complaint is real.

We believe this reflection of societal attitudes discourages women from actively pursuing charges of sexual assault against their assailant. Furthermore, we believe this

reinforces the ideas held by some sexual assault victims that the police aren't able to deal with sexual assault and that the police will not believe them, regardless of the circumstances of the assault, as reported by respondents in the 1984 Solicitor General Canadian Urban Victimization Survey. Current statistics seem to bear out this belief. In the Uniform Crime Reporting Survey (UCR) 1990 Preliminary, 15 percent of all sexual assaults reported in Canada were declared unfounded; in Newfoundland, the rate was 14.2 per cent. In comparison, reports for break and entry were declared unfounded 4.3 percent nationally and 8.9 per cent provincially. Reports which are unfounded are generally deemed to be false reports.

IV. INTERPRETATION OF DATA

We hypothesized, based on the conclusions presented in our literature review, that decisions made by the police to proceed or not to proceed with a complaint are influenced by societal prejudices and perceptions of "good victims" and "real assaults." The police are only a part of and reflect the larger problem of sexism in our society. Society does not give credence to victims who are young, intoxicated, dressed provocatively, or come from a lower socio-economic or non-traditional background (such as being unemployed, on welfare, a single parent or separated/divorced/living common-law).

Neither does society give credence to victims who know their assailant, or who have had a sexual relationship with their assailant. (It is worth noting that although the current law does not permit a woman's sexual history to influence her case, it can still be considered in exceptional cases.) In other words, society is saying that women who display these characteristics have not been sexually assaulted (Clark & Lewis, 92). Social biases influence all members of society, including police and complainants. Consequently, when victims do report an assault, the police, coloured by the bias of the society in which they live, may not always lay charges on their behalf. Often the complainants themselves unconsciously reinforce the assumptions of the police by blaming themselves for the assault.

The problem also lies in the fact that sexual assault means different things to different people; thus the provisions in the Criminal Code have been open to interpretation. For example, grabbing a woman's breast has been defined as sexual assault (Gunn & Minch, 104-109). Because the definition is not widely recognized, police tend to minimize assaults of this nature. When an act such as this one is

condoned in particular circumstances, the law fails to protect women and uphold their right to freedom from interference with their sexual integrity (Vandervort, 44).

In our study, the police response was assessed in two ways: first, files were categorized by their progress through the justice system (ie., whether or not charges resulted) and then files were examined for evidence of police bias in favour of or against the laying of a charge.[13] We chose to examine the influence six factors played in confirming or eliminating police doubts with respect to the validity of complaints of sexual assault.

4.1 The complainant's appearance or dress at the time of the assault

Of all the myths surrounding sexual assault, perhaps the most pernicious one is the perception that a woman's dress or appearance is somehow responsible for provoking the sexual assault. Clark and Lewis noted:

> *(there was) no justification for this assumption in our own or other data. Our victims, like any other randomly chosen sample of women, displayed a wide range of physical characteristics and styles of dress* (Clark & Lewis, 78).

Gunn and Minch also showed that this attitude was prevalent throughout the justice system, beginning with the police level and proceeding through the various court levels, from the Crown prosecutors and defense lawyers to the judges. This attitude also contributed to variations in convictions and sentencing, not only in the files they surveyed, but also in

13 It was not possible, as Clark and Lewis had done, to assess the effect multiple factors had on police decisions to lay charges, except in a few instances.

surveys of current files reported in the local media (Gunn & Minch, 17-18).

TABLE ONE: The Complainant's appearance or dress at the time of the assault

	# of Files	Charges Laid	Charges Withdrawn	Victim Withdrew Complaint	Complaint deemed unfounded	Other*
Evidentiary	20	8	0	4	0	8
Non Evidentiary	8	4	2	1	1	2

* other means no outcome provided

In the files we surveyed, the complainant's clothing was usually mentioned or described if, during the course of the sexual assault, items of clothing were removed. Clothing which was torn, ripped or soiled with dirt or blood was noted also in the police file as supporting or corroborating evidence that an assault took place.

We found that police were more willing to pursue a case which had ripped, torn or bloody clothing as evidence. The police displayed less enthusiasm for pursuing a file if they didn't have such evidence, even though the Criminal Code indicates that the lack of such evidence need not preclude the police from laying charges. One investigating officer noted:

"Due to the lack of credible evidence in this case I feel no use in continuing the investigation. The complaint was made two days after the offence and this created an immediate problem in trying to locate the suspect."

> *"Due to the lack of credible evidence in this case I feel no use in continuing the investigation. The complaint was made two days after the offence and this created an immediate problem in trying to locate the suspect."*

Although descriptions of what the complainant looked like have no evidentiary value, they too were also recorded in the police files, including references to a complainant's weight,

what she was wearing, or her looks with respect to her intellectual abilities. We also found that when police didn't believe a complainant, they picked apart her clothing and general appearance to justify their disbelief. Police comments about a complainant's appearance highlighted items that police believed took away from the complainant's credibility; for example, one complainant was described as obese. In a similar fashion, if a complainant was described as looking slow or developmentally delayed, she was perceived to present problems of credibility as a witness.

Women were much less likely to drop charges when the reference to clothing related to corroborating evidence of her story. We conclude this was so because the complainant felt she was believed by the police, and that the police officer was sympathetic. Women tended to drop charges, however, when references to her clothing had nothing to do with corroborating evidence of her story; the questions about what the complainant was wearing at the time of the assault suggested that on some occasions the police believed that there was some enticement or encouragement for the attack.

4.2 The complainant/assailant relationship

For many people, including the complainants themselves, sexual assault is still perceived as a crime committed by strangers. Therefore, when there is a relationship between the complainant and the offender, the responsibility for the crime is often shifted to the complainant, and the complainant is blamed for inviting the assault or for not stopping it (Burgess & Holmstrom, 1985, 189). Gunn and Minch identify this as a particular factor in determining sentences for convicted offenders (120-122) since

> *an attack by a stranger fits the public image of a 'real' assault. As the relationship between complainant and offender becomes closer,* ***defining the assault*** *as a criminal offence becomes more difficult* (Gunn & Minch, 47, our emphasis).

We examined 84 files in which the police noted the complainant's relationship with assailant. To facilitate the analysis, the relationships were categorized in four ways:

1) acquaintances (including friends, friends of friends, casual acquaintances, classmates, colleagues, and assailants police files simply identified as "known" to the complainant);

2) family friends and neighbours;

3) members of immediate family; and

4) boyfriends and husbands, including former boyfriends and former husbands.

The division of the categories marks the degree of trust which is assumed in the relationships.

TABLE TWO: The Complainant/Assailant Relationship

	No of Files	Charges Laid	Charges Withdrawn	Complaint Withdrawn	Unfounded	Other
Acquaintances	39	21	3	9	2	7
Family Friends/Neighbours	7	5	1	1	0	1
Immediate Family	28	19	0	0	4	5
Boyfriends/Husbands	10	4	2	1	0	5

Unlike other factors analyzed for this study, there weren't any discernable patterns to be found in police decisions to lay charges. There are data to support a conclusion that the younger the complainants and/or the assailants in files where they were known to each other as acquaintances, the more likely the police were to

encourage the withdrawal of a complaint and/or closure of a file to spare the complainant the trauma of the court process.

We did find that in some cases where the complainant knew the assailant, the police assumed that the complainant was partly responsible for causing the assault, or for not avoiding the assault. In one file, the investigating officer noted that:

"The victim had the opportunity to leave but remained (...). This may have been an indication to the offender that she may accept his advances."

> *"The victim had the opportunity to leave but remained (...). This may have been an indication to the offender that she may accept his advances."*

Also disturbing was the assumption that an assault may not have taken place at all; for example, in one file the investigating officer said it was doubtful an assault took place because *"she did invite these two people back to her house. There was no force, she had invited these people back to her house."*

"she did invite these two people back to her house. There was no force, she had invited these people back to her house."

4.3 The complainant's use of drugs or alcohol

Both Clark and Lewis, and Hinch[14] found that complainants who were described as intoxicated or using drugs were more likely to have their complaints of sexual assault dismissed as unfounded or concluded. Several American researchers have suggested that police are influenced by social attitudes which do not approve of women's consumption of alcohol; these researchers subsequently concluded that police officers are not likely to believe a complainant who was drinking before the sexual assault, who was too intoxicated to give a coherent statement, or who was known to frequent bars or be a heavy drinker/alcoholic (Williams & Holmes, 118; Katz & Mazur, 211; McCahill, Meyer, & Fischman, 112).

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14 Hinch noted that "in 1983 and 1984 combined, only one of 18 female victims said to be 'drunk', 'intoxicated', or 'on drugs' had her complaint concluded with a charge" (114).

TABLE THREE: The Complainant's Use of Alcohol or Drugs						
	No of Files	Charges Laid	Charges Withdrawn	Complaint Withdrawn	Unfounded	Other
Complainant	12	5	0	4	0	3
Offender	8	6	0	2	0	0
Both	14	8	1	4	1	1

We found that reports from complainants who had been drinking or were drunk at the time of the assault were less likely to result in charges than those reports where both the offender and the complainant had been drinking or only the offender had been drunk. It appeared that the police did not disbelieve that a sexual act or encounter had taken place; they just doubted it was sexual assault and that the complainant's reaction resulted from regret and/or that her intoxication caused her to misinterpret the situation. For example, one police officer noted in the file that:

> *"... while giving her statement, (the complainant) seemed to laugh throughout parts of her statement ... (The complainant) was drinking at the time of the assault and again while giving her statement. It seems to be some kind of consent somewhere during this assault."*

"... while giving her statement, (the complainant) seemed to laugh throughout parts of her statement ... (The complainant) was drinking at the time of the assault and again while giving her statement. It seems to be some kind of consent somewhere during this assault."

We also conclude that complainants who were drinking or using drugs at the time of the assault were far more likely to withdraw their complaint than in files where the offender or both offender and complainant were drinking or using drugs.

Complaints where offenders were described as using drugs and/or alcohol at the time of the assault were more likely to result in charges than those complaints where the complainant alone is described as drunk or drinking at the time of the assault. We speculate that two possible explanations for

the higher charge rate in this category are that a) the complainant was not suspected of misinterpreting the event, and b) the assailant's behaviour was perceived to be a result of losing control while under the influence.

The fact that both complainant and assailant were described as drinking or drunk at the time of the assault did not appear to influence police decisions to lay charges following the making of the complaint.

4.4 The socio-economic background of the complainant (including marital status, occupation and economic class)

Previous research suggests that complainants of a "*low economic status and dubious social reputation are not regarded as 'credible' witnesses by the judicial system ...*" (Clark & Lewis, 87). We wondered for example whether our research would show that a complaint of sexual assault made by a professional woman was more likely to be pursued than one made by an unemployed single mother. Furthermore, we wondered if in files where the accused is a professional, whether the police were more likely to believe his version of events instead of the report made by the complainant. Research has shown that at the court level, even convicted offenders who are educated, professional, middle-class, respected members of the community receive shorter sentences and are viewed more tolerantly by presiding judges than those offenders who are unemployed, untrained or of a lower socio-economic background (Marshall, 1988).

TABLE FOUR: The Socio-economic Background of Complainant						
	No of Files	Charges Laid	Charges Withdrawn	Complaint Withdrawn	Unfounded	Other
Single	13	7	2	1	1	4
Married/ Divorced/ Separated	15	5	1	7	0	3
Single Mothers	8	3	0	3	0	2
Other	11	3	1	1	4	3

We found that there was a connection between a complainant's socio-economic background and the police response to her complaint. The police appeared more ready to doubt complaints from complainants who were single mothers, who were married, or who came from what is perceived to be a lower socio-economic background. In some files, police expressed the assumption that the complainant was trying to make up an acceptable reason for an unexplained absence to her partner:

"There is something wrong with her story, and it seems possible that this story was concocted by (the victim) to explain her late arrival home to her husband."

"There is something wrong with her story, and it seems possible that this story was concocted by (the victim) to explain her late arrival home to her husband."

There was also a substantial difference observed in the numbers of charges laid in response to complaints from complainants who were single (unmarried) women (whom the police tended to believe), and complaints from the other complainants who were married, single mothers or other (whom the police tended not to believe).

4.5 The complainant's emotional response to the sexual assault

A woman's credibility as a complainant can also be damaged if she reacts to sexual assault in a manner deemed unacceptable by others. Research carried out on women's response to sexual assault has resulted in the identification of Rape Trauma Syndrome. One aspect of this syndrome is the emotional reaction women display; this reaction is separated into two styles:

> *... the expressed style, in which feelings of fear, anger, and anxiety are shown through such behaviour as crying, sobbing, smiling, restlessness, and tenseness; and the controlled style, in which feelings (are) masked or hidden and a calm, composed, or subdued affect* (is shown) (Burgess & Holmstrom, 1977, 122).

However, if the investigating officer is unfamiliar with this syndrome, the woman's credibility is questioned and her complaint is considered suspect in the absence of other evidence.

TABLE FIVE: The Complainant's Emotional Response to Sexual Assault

	No of Files	Charges Laid	Charges Withdrawn	Complaint Withdrawn	Unfounded	Other
Appropriate	18	13	0	3	1	1
Inappropriate	11	1	1	3	1	6

We found that the police did apply certain standards in assessing the behaviour of complainants; those women who were hysterical, threatened suicide, and/or expressed fear were treated more seriously and were believed more often than

those women who did not display such behaviours. The police files quoted complainants whose responses reflected stereotypical attitudes:

"I was scared and mad;" "I was afraid of him;" and "I just closed my eyes wishing they would go away. I was too scared to do anything."

> *"I was scared and mad;" "I was afraid of him;" and "I just closed my eyes wishing they would go away. I was too scared to do anything."*

Of note is the fact that charges were laid in all of the files where a complainant was described as suicidal, either talking about it or attempting it.

Complainants who, in the words of the police, "did not sound worried," who "want charges out of spite," who "became casual and joking," or who "make no effort to avoid offender or places he frequents," were not considered credible enough as witnesses for files in which "respectable" charges could be prosecuted.

In fact, police tended to treat with suspicion those women who displayed other kinds of behaviours such as calmness, humour or disinterest. Police comments in the files were clear and specific about what **was** considered appropriate and inappropriate displays of behaviour. Complainants who, in the words of the police, "did not sound worried," who "want charges out of spite," who "became casual and joking," or who "make no effort to avoid offender or places he frequents," were not considered credible enough as witnesses for files in which "respectable" charges could be prosecuted.

"I feel the victim was not raped due to the lack of any emotional distress and any physical evidence shown by her. I also feel that her story was fabricated to explain the situation she was in. Therefore I suggest this file be concluded here."

Furthermore, police file notes also indicate that complainants who did not display any emotional distress, who laughed or acted embarrassed, or who acted uninterested in the investigation (either refusing to answer questions, refusing a physical examination or refusing to return for further interviews) had their files closed or were left open without any indication for future follow-up activity. One officer was clear in his disbelief:

> *"I feel the victim was not raped due to the lack of any emotional distress and any physical evidence shown by her. I also feel that her story was fabricated to explain the situation she was in. Therefore I suggest this file be concluded here."*

Sometimes the complainant's emotional response was interpreted as an over-reaction to an event; that is, the complainant was perceived to have misinterpreted the alleged offender's intention. Questions asked during interviews of alleged offenders indicate that from the police perspective, the assault is perceived as minimal in action or impact, and thus no official action is required:

"I feel that although the assault technically is sexual in nature, it is very minute in nature. It is also my opinion that the complainant's mother has blown the issue out of proportion. I feel that we would be doing (the offender) more harm than good if we punish him in any form at this point in time, this of course includes criminal charges."

"*I feel that although the assault technically is sexual in nature, it is very minute in nature. It is also my opinion that the complainant's mother has blown the issue out of proportion. I feel that we would be doing (the offender) more harm than good if we punish him in any form at this point in time, this of course includes criminal charges.*"

Assaults which involved sexual touching, grabbing and restraint were perceived by the police in five of the files as a joke gone wrong. For example, the police asked alleged offenders in one file "*Did you sexually assault (the woman) or was it more of a joke?*" Not surprisingly, the men, taking their cue from the question, replied their actions were intended as a joke. Another incident was described as "nothing more than a prank" while a third file noted:

"Did you sexually assault (the woman) or was it more of a joke?"

"(the offender) does not deny touching the victim's breasts but did so with the intention of being friendly, not with the intention of assault."

"*(the offender) does not deny touching the victim's breasts but did so with the intention of being friendly, not with the intention of assault.*"

The implication for the complainant was that her complaint was not, and could not be taken seriously, and that her response, in laying a complaint, was not justified; instead her position was one of being a poor sport, and not a victim. This is a dangerous message and denies the seriousness of sexual assault and its effect upon the victim.

4.6 The complainant's mental health and abilities

Complainants who are mentally handicapped or mentally unstable face additional obstacles in appearing as credible complainants and witnesses. There may be problems with understanding and answering complicated questions, or in dealing with an unfamiliar system in an already traumatic situation.

TABLE SIX: The Complainant's Mental Health and Abilities

	No of Files	Charges Laid	Charges Withdrawn	Complaint Withdrawn	Unfounded	Other
Mental Competence	9	4	0	0	3	2
Mental Health	15	7	1	0	3	5

We found that complainants who were mentally ill were believed more often than those complainants who were mentally disabled, particularly when the complainant's mental problems were seen as related to the experience of being sexually assaulted (ie., the complainant was seen as suffering from mental trauma).

There were 21 files which contained references to the complainant's mental health or competence, and charges were laid in less than half of these files. One-third of the files were declared by the police to be unfounded (or false) reports. In most of the files, the police supported their decision to declare a case unfounded or closed, that is not worth pursuing, on the basis of victim credibility and the absence of any physical evidence to support a charge of sexual assault. For example, one file noted that:

"(The complainant) does not appear to be a very intelligent person and I don't feel that she would be a very credible witness in court."

"(The complainant) does not appear to be a very intelligent person and I don't feel that she would be a very credible witness in court."

It was also apparent that the police treated complainants who were mentally disabled differently from those complainants who were mentally unstable. Files with complainants described as mentally unstable or needing the care of a counsellor or psychiatrist had a higher charge rate than those files with complainants described as mentally disabled. Police were also more likely to leave files open in files with mentally unstable complainants, and they were more likely to close or declare unfounded those files of complainants who were mentally disabled.

V. THE COMPLAINTS PROCESS

5.1 Police Interviewing Techniques

The purpose of interviews is to get a clear and complete picture of events surrounding an alleged offence. Police must have reasonable and probable grounds to lay a charge; as a result, an investigation of criminal allegations can include statements from complainants, alleged offenders and witnesses. Police experienced in interviewing complainants of sexual assault say the initial interviews with a complainant proceeds in two stages. In the first stage they let the woman tell her story, and in the second they ask her specific questions for clarification. The police confirmed that complainants are often interviewed several times to confirm their reports and to clarify salient points.

It is important to remember that the initial report to the police does not necessarily represent the first time the woman has described her assault; our review shows that a complainant may have reported her assault to a friend, a relative, a teacher, a social worker or a health care professional before going to the police. Repeated interviews with the police, and/or other medical professionals do influence a woman in her decision to pursue her complaint through the entire investigation. In the files we reviewed, complainants frequently withdrew their complaints after requests for a second or third interview. We concluded that having to answer the same or new questions did not convey the message the police intended, that is to clarify the report; instead the complainant may have felt the police did not believe her and were trying to catch her out in a lie by making her go over the assault several times.

During the interview, the police may ask certain questions for the purpose of collecting evidence. Examining the files provided some indication of the types of questions

asked. Complainants were asked if they resisted and how, if penetration occurred, if there were threats of violence, if they had been drinking, if they had voluntarily invited sexual touching, if they were wearing a bra, or if they had had a relationship with the offender. In certain situations, some of these questions appeared to be warranted; that is, if there was evidence of physical assault, if the complainant expressed fear of the accused, or if there was a need to distinguish between sexual assault and aggravated sexual assault. But not infrequently, the investigating officers asked these questions when they were trying to find grounds to dismiss a complaint.

It was not unusual for files to indicate that questions focused on the alleged complainant's behaviour before, during and after the assault. For example, when a complainant's statement reads "*I did not do anything to initiate the assault*," it can be safely assumed the statement was made in response to the question: Did you do any thing to initiate the assault? Sometimes files demonstrated a line of questioning which focused on the complainant's previous sexual conduct and reputation. For example, the police asked the complainant "*Have you ever necked with (the accused) in the past?*" and then, if she knew the accused "tried advances" on one of her friends. This type of questioning ignores the intent of the Criminal Code amendments which were implemented to protect the integrity of the person from non-consensual sexual contact. In another file, the officer noted that "*(the victim) has reported two other previous assaults. You would think she'd learn.*" These kinds of attitudes reflected in the questions direct attention to the complainant's sexual history and behaviour, not to mention her ability to judge character, instead of focusing on the offender's actions.

"(the victim) has reported two other previous assaults. You would think she'd learn."

5.2 The Use of the Polygraph Test

The use of the polygraph test to assess the validity of

a complainant's report of sexual assault is problematic. Five complainants and one accused assailant were asked to take a polygraph test. With the sexual assault files examined in this sample, the police request and/or the victim's failure of the test almost always led to the complainant's withdrawal of the complaint or the confession that the complaint was a lie. Even though the police do use the polygraph test in other kinds of files, (when they suspect a complaint is false or that the alleged offender is lying but they have no proof for such a belief), it seems particularly cruel and insensitive to use it in files of sexual assault.

However, neither the results of the polygraph test, popularly known as the lie detector test, nor the fact that a complainant (or offender for that matter) has taken or refused a polygraph test is evidence admissible in Canadian courts. Furthermore, neither complainants nor offenders are obliged to take the test; its use is a matter of policy only, not legislation. Yet the refusal to take a polygraph test was seen as significant by the police; some files note the complainant was warned that failure to comply with the request meant the police would close her file and discontinue the investigation.

5.3 Covert Messages of Doubt

The fact that complainants of sexual assault are asked to take a polygraph test is a clear indication that they are not believed. We suspect that other, more covert, expressions of disbelief are conveyed through the complaints process, either through the kinds of questions asked, or the kinds of procedures invoked.

For example, although penetration is no longer necessary to prove a charge of sexual assault, the files showed that the police sometimes insisted on collecting certain kinds of evidence, to the point of exerting their authority and taking the complainant, despite her refusals, to the hospital to be

examined or to have doctors administer the rape kit.

One investigating officer noted: *"I don't feel we have a very respectable charge here. I seriously question the victim's 100 per cent honesty."* In yet another example, police noted in their reports that they doubted the complainant, then went on to support the validity of their belief with the fact that the complainant withdrew, recanted or refused to co-operate with respect to their complaint.

"I don't feel we have a very respectable charge here. I seriously question the victim's 100 per cent honesty."

An American study, reported in 1990, noted that police officers do influence complainants in their decisions to pursue charges. Kerstetter and Van Winkle noted that police detectives saw a complainant's refusal to pursue charges as a face-saving mechanism to avoid the admission of falsehood or recanting; the result is a case the police treat as unfounded rather than unsolved (Kerstetter et al, 270).

Techniques used to influence a complainant's decision to pursue include:

> *portray(ing) the personal costs involved-- repeat trips to and lengthy waits at court, humiliating cross-examination by defense counsel, and the like. Conversely, if detectives wish to pursue a case but the complainant seems ambivalent, they may attempt to strengthen her resolve by talking about the need for her co-operation to prevent an attack on another woman* (Kerstetter et al, 270).

"a defence lawyer will have a heyday with this (...) I would like to speak with the victim and run all this by her."

In the files reviewed for this study, there were several instances in which the police advised the complainant of the traumatic aspects of the court process as a preamble to advising the complainant to actually withdraw the complaint or to justify their (the police) reluctance to pursue charges against an identified assailant.

"I feel I just can't go through with the court (proceedings)."

One officer commented in the file that *"a defence lawyer will have a heyday with this (...) I would like to speak with the victim and run all this by her."* One complainant who withdrew her complaint noted: *"I feel I just can't go through with the*

court (proceedings)." There was only one instance in which the police encouraged the complainant to continue with the investigation; the complainant still refused, even after a discussion of more than two hours.

Our conclusion is that the police, consciously or not, convey their doubt to the complainants. While a little more than half of the files reviewed resulted in charges, police refused to lay charges in 19 per cent of the files because they doubted the report outright, and complainants in another 18 per cent of the files withdrew their complaints of sexual assault after being asked to repeat their statement and/or take a polygraph, or after becoming intimidated by the reporting process.

VI. CONCLUSION

We cannot escape the fact that the police response to complainants of sexual assault exhibits the same negative biases and attitudes we see in society at large. The complainants of sexual assault whose stories were told in the police files reviewed here faced many pressures: from family, husbands and boyfriends, even employers and friends. But the pressure exerted by the police is tremendous: women reporting sexual assault cannot avoid facing the expectations and assumptions of the police for complainants to behave and report like good rape complainants -- virginal, untouched and innocent; employed, middle-class, and vice-free; hysterical, as well as physically and mentally traumatized -- with lots of corroborating evidence by co-operative witnesses.

It was clear from our review that certain variables in the files triggered questions from the investigating officers and/or the reviewers. For example, when the complainant came from a transition house or was homeless, or had made previous complaints, this triggered questions such as what was her condition, what is her reputation, what is her attitude.

These questions were not found in other files (particularly those where women came from privileged middle-class backgrounds). We conclude that the police asked these questions because they suspected the complainant's story, and they suspected the complainant's story simply because she may have been homeless, drunk, considered promiscuous or previously abused. The fact is, though, very few complainants have all the attributes of the "good" victim; as a result, the overwhelming majority of women who are victims of sexual assault continue to be ill-served by the judicial process.

VII. RECOMMENDATIONS

The Provincial Advisory Council's recommendations are guided by the principles expressed in the Lake Louise declaration[15]:

1) Violence against women is a crime and punishable by law.

2) Women are entitled to live in a safe environment.

3) Offenders must be held accountable for their behaviour.

4) The elimination of violence against women requires a response including prevention, public education, services and enforcement of the law.

5) Every individual, community and government in Canada must do everything possible to help the women, children and families affected by violence; we must all work together to achieve a society free from violence.

Some of these recommendations are directed to the police, others to various departments within the provincial government. It is the Advisory Council's belief that such measures as we propose can only succeed if there is a co-ordinated, co-operative and integrated approach to addressing issues of violence against women and the response of the justice system to those issues.

1. That the Provincial Government conduct a comprehensive study of the justice system's response to reports of sexual assault, from the first report at the police level to the conclusion at the court levels (including appeals).

2. That the Provincial Government make a long-term commitment to services for survivors of rape, sexual

15 In May 1990, at Banff, Alberta, the federal, provincial and territorial ministers responsible for the status of women issued a declaration on violence against women.

assault and incest throughout the province, and that this commitment take the form of an agency which:

a) will be funded by the provincial government, but remain at arms length to ensure impartiality;

b) will be directed by an advisory board with the assistance of an executive director and a team of regional co-ordinators;

c) will act as a contractor to community groups for the provision of necessary victim support services (including, but not restricted to, sexual assault survivor groups, rape crisis centres, and victim advocates);

d) will encourage research, data collection and evaluation of initiatives to ensure that the justice system is responding to women's complaints of sexual abuse and sexual assault;

e) will have a mandate and a budget for research and public education on sexual abuse and sexual assault.

3. That the Provincial Government recognize that boards of directors of shelters, rape crisis centres/sexual assault support centres and other women's crisis services need support to carry out their responsibilities.

4. That the Provincial Department of Justice conduct, or provide funding to the appropriate agency to conduct well-developed educational programs for members of the police force, Crown attorneys, and judges on the subject of sexual assault, and that these programs include a gender awareness component.

5. That the Provincial Department of Justice divide the Criminal Investigation Division of the Royal Newfoundland Constabulary so that a special section be formed to deal with sexual offenses, and that the following terms and conditions be met:

a) that members of this special section be trained intensively and be given regular counselling to deal with the issue of sexual assault;

b) that members of this special section be restricted to an appointment of two years to limit the effects of stress and burnout which result from being a front line worker;

c) that the special section focus on providing an appropriate and sensitive response to women reporting sexual assault;

d) that the special section liaise with the sexual assault counsellors in the community to provide support for women who are making complaints of sexual assault;

e) that the special section be monitored by an external auditor to ensure that biases do not interfere with the delivery of justice.

6. That the Department of Justice collect and publish in an annual report any relevant information on all sexual assault complaints, including:

a) numbers of initial reports, arrests, convictions, and sentences;

b) statistical breakdowns of rates of sexual assault, sexual abuse, incest and date rape;

c) statistical breakdowns according to age, sex, socio-economic status and marital status.

7. That the Department of Justice and the police forces develop guidelines for investigative interviewing of female complainants of sexual assault, and that these guidelines include information on victim behaviour and response to trauma, interviewing techniques, and a checklist for collecting important information.

8. That the Department of Justice establish a program for abusive men and sex offenders in communities and/or institutions with the goai of making men accountable for their behaviour and stopping their violence against women.

9. That the Provincial Department of Education include in the mandatory health education curriculum information on sexual assault/abuse, and that part of this information address gender awareness and teach boys and girls how to treat each other with respect, and that similar information be included in materials for students in Levels One through Three.

10. That the Provincial Department of Education take steps to in-service and pre-service their teachers on issues of gender awareness so that an understanding of gender equality can become an integral part of the students' school lives.

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